

**Cakemasters Corporation and United Food and Commercial Workers International Union, Local 1500, AFL-CIO. Case 2-CA-25905**

November 4, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by United Food and Commercial Workers International Union, Local 1500, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on February 26, 1993, against Cakemasters Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 7, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 8, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 29, 1993, notified the Respondent that unless an answer was received by May 13, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a domestic corporation with an office and place of business in New York, New York, is engaged in the operation of retail bakery stores. Annually the Respondent derives gross revenues in excess of \$500,000 and purchases and receives goods and supplies valued in excess of \$50,000 directly from points located outside the State of New York. We find that the Respondent is an employer engaged in com-

merce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time sales and retail employees employed by the Respondent at its facilities, excluding all kitchen employees, guards, professional employees and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's unit employees and the Union has been recognized as such representative by the Respondent. Such recognition is embodied in a collective-bargaining agreement which is effective by its terms for the period February 1, 1992, to January 31, 1995. At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and is the exclusive representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about April 1992, the Respondent has failed and refused to remit unit employees' dues and initiation fees to the Union as required by article fifteen of the 1992-1995 contract,<sup>1</sup> failed and refused to make payments to the welfare fund, pension fund, and legal services fund as required by articles twenty fourth,<sup>2</sup> twenty fifth,<sup>3</sup> and twenty sixth,<sup>4</sup> and has failed and refused to pay unit employees wage increases as required by article thirty second.<sup>5</sup> These subjects relate to wages, hours, and other terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in these acts and conduct without prior notice to the Union and without having obtained the Union's con-

<sup>1</sup> Art. fifteen requires that the Respondent make deductions for dues and initiation fees for unit employees who have signed authorization forms and to remit the moneys to the Union.

<sup>2</sup> Art. twenty fourth, *welfare fund*, requires the Respondent to make contributions to the welfare fund on behalf of the unit employees in the amounts set forth in that article.

<sup>3</sup> Art. twenty fifth, *pension fund*, requires the Respondent to make payments to the pension plan on behalf of unit employees in the amounts set forth in that article.

<sup>4</sup> Art. twenty sixth, *legal services fund*, requires the Respondent to make contributions to the legal services fund in the amount of \$2.50 per month on behalf of unit employees.

<sup>5</sup> Art. thirty second requires the Respondent to pay employees certain wage increases as set forth in schedule A of the contract.

sent to modify and amend the terms and conditions of the collective-bargaining agreement.<sup>6</sup>

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has violated Section 8(a)(1) and (5) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required wage increases as well as failing to make payments to the welfare fund, pension fund, and legal services fund, we shall order the Respondent to abide by all the terms of the 1992–1995 contract with the Union and to make whole its unit employees by paying all wage increases that were due and owing and by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts and the unpaid wage increases to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be ordered to remit all dues and initiation fees it has failed to remit pursuant to the terms of the contract to the Union with interest.

#### ORDER

The National Labor Relations Board orders that the Respondent, Cakemasters Corporation, New York, New York, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Failing and refusing to abide by all the terms of the 1992–1995 contract with United Food and Commercial Workers International Union, Local 1500, AFL–CIO establishing the wages, hours, and terms and conditions of employment of employees in the following appropriate bargaining unit:

All full-time and regular part-time sales and retail employees employed by the Respondent at its facilities, excluding all kitchen employees, guards, professional employees and supervisors as defined in the Act.

(b) Failing and refusing to remit unit employees' dues and initiation fees to the Union as required by article fifteen of the contract; failing and refusing to make payments to the welfare fund, pension fund, and legal services fund as required by articles twenty fourth, twenty fifth, and twenty sixth of the contract; and failing to pay wage increases as required by article thirty second of the contract.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by all the terms of the 1992–1995 contract with the Union.

(b) Make its employees, the funds, and the Union whole for its failure to adhere to the terms of the contract by paying all wage increases and making all payments and remitting all moneys, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

<sup>6</sup>In addition, the complaint alleges that the Respondent has made other changes relating to the wages, hours, and terms and conditions of employment "the exact nature of which are presently unknown to the General Counsel." The complaint alleges that these changes were made unilaterally and involve mandatory terms of employment. The petition attached to the General Counsel's Motion for Summary Judgment requests that summary judgment be granted on this allegation. We decline to grant summary judgment on this allegation because it does not identify the changes that were allegedly made.

<sup>7</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to abide by all the terms of the 1992–1995 contract with United Food and Commercial Workers International Union, Local 1500, AFL–CIO establishing the wages, hours, and terms and conditions of employment of our employees in the following appropriate unit:

All full-time and regular part-time sales and retail employees employed by us at our facilities, excluding all kitchen employees, guards, professional employees and supervisors as defined in the Act.

WE WILL NOT fail and refuse to remit unit employees' dues and initiation fees to the Union as required by article fifteen of the contract.

WE WILL NOT fail and refuse to make payments to the welfare fund, pension fund, and legal services fund, as required by articles twenty fourth, twenty fifth, and twenty sixth of the contract.

WE WILL NOT fail and refuse to pay unit employees wage increases as required by article thirty second of the contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL abide by all the terms of the 1992–1995 contract with the Union.

WE WILL remit unit employees' dues and initiation fees to the Union, with interest, and WE WILL make all payments which we failed to make to the welfare fund, pension fund, and legal services fund, with interest, and make our employees whole, with interest, for any expenses which they incurred from our failure to make these payments.

WE WILL make all wage increases as required by article thirty second of the contract and make our employees whole, with interest, for our failure to make these wage increases pursuant to the contract.

CAKEMASTERS CORPORATION